

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>TERENCE ADAMS</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 230,369
<b>SWIFT-ECKRICH, INC.</b>	)	
Respondent	)	
Self-Insured	)	

**ORDER**

Respondent appeals from the July 14, 1999, Award of Administrative Law Judge Bryce D. Benedict. In the Award, the Administrative Law Judge found claimant had provided timely notice of accident pursuant to K.S.A. 44-520. Oral argument was held November 24, 1999.

**APPEARANCES**

Claimant appeared by his attorney, Jeff K. Cooper of Topeka, Kansas. Respondent appeared by its attorney, Mark E. Kolich of Kansas City, Kansas. There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations set forth in the Award of the Administrative Law Judge are adopted for the purposes of this Award.

**ISSUES**

Did claimant provide timely notice of accident pursuant to K.S.A. 44-520?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, including the stipulations of the parties, the Appeals Board finds that the Award of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury on December 5, 1997, while working in the rack room of the Armour Swift-Eckrich plant. Claimant, who was hired by respondent on December 1, 1997, began experiencing problems on December 5, 1997, with pain in his neck, upper back and shoulders. By December 5, he was dropping things, could not hold anything in his hands and the pain had become severe enough he could no longer continue work. Claimant testified that his acting supervisor was at training, so he told his immediate supervisor he was having trouble with his arms and upper back, and that he could not work in the rack room anymore because his back and shoulders were hurting and he could not hold onto the meat. The supervisor offered to switch claimant into a different room. This was done about halfway through the day on December 6, 1997. Even with the lighter duty work, claimant was unable to continue and was allowed on December 6 to go home early.

Claimant then called in sick on December 8, 9, 10 and 11. Respondent acknowledges that the claimant called in but disputes that these call-ins were notice that claimant suffered accidental injury.

Claimant testified that during one of these calls he spoke to the human resources manager about the problem and was directed by the human resources manager to contact his supervisor and to file a report. Claimant left a message for the supervisor but this telephone call was never returned.

K.S.A. 44-520 obligates that notice be given to the employer within ten days after the date of accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of notice unnecessary.

The only representative to testify for respondent was Bryce Wendland, the respondent's safety leader. He acknowledged that claimant called in sick on December 8 through December 11, but denied that respondent was advised of any work-related connection to claimant's complaints. Mr. Wendland did not discuss claimant's situation with either claimant's supervisor or with the human resources manager, so he was unable to testify regarding what, if any, conversations claimant may have had with those individuals.

The Administrative Law Judge, in finding that claimant had provided timely notice of accident, held in his four-line opinion that practically any complaint of pain has been held to be the equivalent of giving notice that an employee is alleging an injury which was caused by employment. In support of that position, the Administrative Law Judge cited Whitmore v. Econo Clad Books, WCAB Docket No. 239,548 (June 1999). In Whitmore,

the claimant had over a dozen conversations with her supervisor regarding the fact that her hands were bothering her. Ms. Whitmore's supervisor, Mr. Ketterling, responded on some occasions by relieving her from the more physically demanding duties and on other occasions he would advise that she needed to continue but he would try to get her help. The Appeals Board found that over a dozen contacts regarding the difficulties with her hands, which at times led to a modification of her duties, was sufficient notice to satisfy the requirements of K.S.A. 44-520. The Appeals Board found this, rather than being "practically any complaint," was a substantial complaint which should have placed the respondent on notice of ongoing physical injuries associated with the job.

In this case, claimant advised his acting supervisor of his difficulties and was moved to a different room because of his complaints. He was also allowed to go home early on his last day at work. Moreover, after contacting the human resources manager, claimant was advised to contact his supervisor and file a report. This evidence is unrebutted by respondent. The Appeals Board finds respondent had notice that claimant suffered accidental injury arising out of and in the course of his employment sufficient to meet the requirements of K.S.A. 44-520.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated July 14, 1999, granting claimant benefits for an injury suffered on or about December 5, 1997, should be, and is hereby, affirmed.

Claimant is entitled to 22.82 weeks permanent partial disability compensation at the rate of \$200.76 per week totaling \$4,581.34 for a stipulated 5.5 percent permanent partial general body disability. As of the date of this Award, all amounts are due and owing to claimant in one lump sum minus any amounts previously paid.

Claimant's attorney fee contract is approved insofar as it does not contravene the limitations set forth in K.S.A. 1997 Supp. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Nora Lyon & Associates	\$143.00
Owens, Brake, Cowan & Associates	\$118.17

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1999.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     Jeff K. Cooper, Topeka, KS  
       Mark E. Kolich, Kansas City, KS  
       Bryce D. Benedict, Administrative Law Judge  
       Philip S. Harness, Director